(2020) 08 NCLT CK 0007

In the National Company Law Tribunal

Case No : Company Petition No. (CAA)/928/Mb-I Of 2020 And Company Appeal No. (CAA)/4122/Mb-I Of 2019

Enam Advisors And Investment Consultants Private Limited — APPELLANT

Vs

Enam Securities Private Limited — RESPONDENT

Date of Decision : 21-08-2020

Acts Referred:
Companies Act, 2013 — Section 230, 231, 232

Citation : (2020) 08 NCLT CK 0007

Hon'ble Judges : Janab Mohammed Ajmal, J;V. Nallasenapathy, Member (Technical)

Bench : Division Bench

Advocate : Nitin Gutka, Rupa Sutar

Final Decision : Allowed

Judgement

Janab Mohammed Ajmal, Member (J)

1. This Petition seeks sanction under sections 230 to 232 of the Companies Act, 2013 (the Act for short) of the Scheme of Amalgamation between Enam Advisors and Investment Consultants Private Limited (the Transferor Company/Petitioner Company 1) and Enam Securities Private Limited (the Transferee Company/ Petitioner Company 2) and their respective shareholders.

2. The Court was convened through videoconference. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any of the averments made in the Petition.

3. It is submitted by the learned Counsel for the Petitioner Companies that the Petitioner Company 1 was incorporated with the object of carrying on the business as consultants in financial, investment, savings, stocks and shares, debentures and bonds, taxation, accounting, legal fields and engaged in the business of leasing of property and other investment related activities. The

Petitioner Company 2 was incorporated with the object of carrying on the business of subscribing or acquiring membership, dealership, permits or to become a member of any one or more Stock Exchanges, commodity exchanges including derivatives, segments of any exchanges whether in India or abroad and co-operate with any other associations, whether incorporated or not, whose objects are altogether or in part similar to those of the Company. The Petitioner Company 2 is presently engaged in the business of providing advisory services and also carrying on investment in shares securities and LLPs and is a SEBI Registered Member of National Stock Exchange for currency derivative segment.

4. That the Board of Directors of the Petitioner Companies approved the Scheme in their respective meetings held on 16th November, 2019. The Appointed Date fixed under the Scheme is 1st April 2019.

5. That the rationale for the Scheme is that the restructuring would have following benefits.

a) Since both the Companies are into similar businesses, the consolidation will help to have full integration of activities.

b) The merger will achieve greater financial strength and flexibility, to maximize the stakeholders' value.

c) The Merger will lead to greater efficiency including operational rationalization, organizational efficiency, cash flow management and access to cash flow of the combined business which can be deployed more efficiently, eliminate inter corporate dependencies, minimize the administrative expenses and compliances and to maximize shareholders value.

d) The Merger will provide for more productive and optimum utilization of various resources by pooling of the financial resources of the Transferor Company and the Transferee Company.

6. The Company Petition is filed in terms of sections 230 to 232 of the Act and in accordance with the Order passed in CA (CAA) No. 4122/MB/2019 by this Tribunal.

7. The Petitioner Companies have complied with all the requirements as per directions of the Tribunal and have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Act and the Rules made there under as applicable. The undertakings given by the Petitioner Companies are accepted.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 6th July, 2020, inter alia stating therein that save and except as stated in para IV (a) to (f) of the Report, the Scheme is not prejudicial to the interest of shareholders and public. In response to the observations made by the Regional Director, the Petitioner Company has also given necessary

undertakings and clarification. Further the observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies which is summarized in the table below:

Sr. No. Para (IV)

RD Report/Observation 6th July 2020

Response of the Petitioner Companies

a)

In addition to compliance of AS-14 (IND AS-103), the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS- 8) etc.

Apropos observation made in paragraph IV(a) of the report of Regional Director, Learned Authorised Representative for the Petitioner Companies submits that the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Merger to comply with accounting standards AS-14 (IND AS-103) and any other applicable accounting standards including AS-5(IND AS-8) to the extent applicable.

b)

As per Part-I -Definitions Clause 3(3.5 & 3.6) of the Scheme,

"Appointed Date" means 1st April, 2019 or such other date as may be fixed by the Tribunal.

"Operative Date" means the dates on which certified copies of the NCLT Order sanctioning this scheme is filed with Registrar of Companies, Mumbai,

In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the Petitioners may be asked to comply with the requirements and clarified vide circular No. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

Apropos observation made in paragraph IV(b) of the report of Regional Director, Learned Authorised Representative for the Petitioner Companies submits that the appointed date i.e. 1st April 2019 has been clearly indicated in the Scheme in accordance with provision of Section 232(6) of the Companies and the scheme shall become effective from the appointed date. The Learned Authorised Representative further submits that the Petitioner Companies have already complied with the requirements and clarification of circular No. F. No. 7/12/2019/ CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs by clearly specifying the appointed date in the scheme and hence the question of undertaking for compliance to the requirements of the said circular does not arise.

c)

As regards part-III Clause 17(17.1 to 17.5) of the Scheme, (Combination of Authorised Share capital of the Transferee Company),it is submitted that of the fee if any payable by Transferee Company shall be in accordance with the Provisions of Section 232(3)(i) of the Companies Act, 2013.

Apropos observations made in paragraph IV(c) of the Report of the Regional Director, Learned Authorised Representative for the Petitioner Companies submits that the Transferee Company will be eligible for set-off of fees on the authorised share capital paid by the Transferor Company and thus comply with the provisions of Section 232(3) (i) of the Companies Act, 2013.

d)

The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per section 230(6) of the Act in meetings duly held in terms of Section 230 (1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

Apropos observations made in paragraph IV(d) of the Report of the Regional Director, Learned Authorised Representative for the Petitioner Companies submits that by the order delivered on 6th February, 2020 passed in C.A.(CAA)/4122/MB-I/2019, the Scheme was approved unanimously by the Equity Shareholders of the Petitioner Companies as per terms of Section 230(1) read with sub section (3) to (5) of Section 230 of the Act. The Petitioner Companies has e-filed the Chairperson's Report before this Tribunal and the same is also annexed to this Company Scheme Petitions as per Annexure "J-1 & J-2". This Tribunal in its order delivered in C.A. (CAA.)/4122/MB-I/2019 directed that the meetings of the Secured Creditors and Unsecured Creditors of the Petitioner Companies were not required as there are no Secured Creditors and Unsecured Creditors in the Petitioner Companies.

e)

Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any required;

Apropos observations made in paragraph IV(e) of the Report of the Regional Director, Learned Authorised Representative for the Petitioner Companies submits that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.

f)

The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).

Apropos observations made in paragraph IV(f) of the Report of the Regional Director, Learned Authorised Representative for the Petitioner Companies submits that the Petitioners have submitted the notices under section 230(5) of the Companies Act, 2013 to (i) the Central Government through the office of Regional Director, Western Region, Mumbai (ii) Registrar of Companies, Mumbai (iii) Concerned Income Tax authority (iv) Official Liquidator (In case of Petitioner Company 1) on 19th February, 2020 (v) Securities and Exchange Board of India (SEBI) (In case of Petitioner Company 2) (vi) National Stock Exchange of India (NSE) (In case of Petitioner Company 2) on 20th February, 2020. The Petitioner Companies through their Learned Authorised Representative submit that no representations or objections have been received from any of the Regulatory authorities. Further, the approval of the Scheme by this Tribunal may not deter any such authorities to deal with any of the issues arising after giving effect to the scheme and the Petitioner Companies submit that any issues arising out of the Scheme will be met and answered in accordance with the law.

9. The observations made by the Regional Director have been explained and the clarifications and undertakings given by the Petitioner Companies have been explained in Para 8 above. The Undertaking filed by the Petitioner Companies in response to the said report, is accepted by this Tribunal.

10. The Official Liquidator has filed his Report dated 23th July, 2020 inter alia, stating therein that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of the shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved without winding up by this Tribunal.

11. From the material on record, the Scheme appears to be fair and reasonable and does not violate of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No. 928/MB-I/2020 is made absolute in terms of prayer made in the Petition. Hence

ordered.

ORDER

The Petition be and the same is allowed subject to the following.

i. The Scheme, with the Appointed Date fixed as 1st April, 2019 placed at Page Nos. 298 to 318 of the CP (CAA) No. 928/MB-I/2020 is hereby sanctioned. It shall be binding on the Petitioner and the Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees.

ii. The Transferor Company be dissolved without being wound up.

iii. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme forthwith. The Petitioners are directed to file a copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-Form INC-28, within 30 days from the date of receipt of the Order from the Registry.

iv. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, payable within 60 days from the date of receipt of the Order.

v. The Petitioner Companies shall comply with the undertakings given by it.

vi. All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.

vii. The Petitioner Company is directed to issue newspaper publications with respect to approval of the Scheme, in the same newspapers in which previous publications were issued.

viii. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

ix. Any person interested in above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.